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5 **UNITED STATES DISTRICT COURT**  
6 **DISTRICT OF NEVADA**  
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9 MAGGIE AMADOR, an individual,

2:09-cv-2143-LDG-PAL

10 Plaintiff,

**ORDER**

11 v.

12 AMERICAN FAMILY MUTUAL  
13 INSURANCE COMPANY and DOES I  
14 through X, and ROE CORPORATIONS I  
15 through X, inclusive,

Defendants.

16  
17 Plaintiff, Maggie Amador, brought an action in Nevada State Court seeking damages from  
18 Defendant, American Family Mutual Insurance, for breach of contract, breach of the covenant of  
19 good faith and fair dealing, and violation of the unfair claims practices act. American Family then  
20 removed the case to federal court. Amador now petitions to remand the action because American  
21 Family failed to present evidence establishing the court's subject matter jurisdiction (#8, #9).  
22 Accordingly, the court will grant the motion to remand.

23 A defendant may remove any civil action brought in a state court to the district court of the  
24 United States if the district court would have original jurisdiction for the action. 28 U.S.C. §  
25 1441(a). The district courts of the United States have original jurisdiction when the parties are of  
26 diverse citizenship and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.  
28 U.S.C. § 1332(a). The removal statute is strictly construed and federal jurisdiction must be

1 rejected if there is any doubt as to the right of removal. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th  
2 Cir. 1992). In suits that were originally brought in state court and then removed there is “a strong  
3 presumption” against removal jurisdiction. *Id.*

4 The defendant bears the burden of proving that the amount in controversy meets the  
5 jurisdictional amount when the amount of damages the plaintiff is seeking are unclear. *Id.* The  
6 defendant cannot simply make an accusation that the plaintiff’s damages meet the standard. *See*  
7 *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996). Instead, he must  
8 demonstrate that “more likely than not” the plaintiff’s damages will meet the jurisdictional amount  
9 requirement. *Id.* When doubt exists regarding the right to removal, a case should be remanded to  
10 state court. *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003).

11 American Family argues that the amount in controversy in this case meets the jurisdictional  
12 amount because Nevada law allows for unlimited punitive damages against an insurer that acts in  
13 bad faith. NRS 42.005(2)(b). Although punitive damages can be included to satisfy the  
14 jurisdictional amount, the defendant must produce evidence that demonstrates that the plaintiff is  
15 entitled to recover punitive damages that would meet the jurisdictional amount. *See Bell v.*  
16 *Preferred Life Assur. Soc.*, 320 U.S. 238, 240 (1943). Further, when the amount of punitive  
17 damages the plaintiff is seeking is unclear, as it is in this case, the defendant must establish the  
18 probable amount of punitive damages. *See Matheson*, 319 F.3d at 1090.

19 “Conclusory allegations as to the amount in controversy are insufficient” to establish the  
20 jurisdictional amount. *Id.* at 1090-91. The Ninth Circuit requires defendants to present evidence  
21 concerning jurisdictional determinations to be grounded on a factual basis, similar in quality to  
22 “summary judgment-type evidence.” *Id.* at 1090. The defendant’s evidence does not need to predict  
23 the eventual award with absolute accuracy; the defendant only needs to establish that the punitive  
24 damages have the potential to raise the amount in controversy above the jurisdiction requirement.  
25 *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004)

1 American Family has failed to produce any evidence of the probable value of the punitive  
2 damages Amador is seeking. Instead, American Family has chosen to repeatedly emphasize that  
3 because Nevada does not limit the amount of punitive damages, American Family is “surely  
4 expose[d] ... to an amount in excess of \$75,000”. (Doc. #9 at 4). Without any evidence  
5 establishing the probable value of the punitive damages, American Family has failed to prove that  
6 the punitive damages in this case will rise above the jurisdictional amount.

7 Additionally, American Family has failed to provide evidence that Amador’s actual  
8 damages will rise above \$75,000. In establishing the amount in controversy, defendants may use  
9 settlement demand letters from the plaintiffs as evidence, if the demand letter reflects a reasonable  
10 estimate of the plaintiff’s claim. *See, e.g. Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir.  
11 2002); *Singer v. State Farm Mut. Auto*, 116 F.3d 373, 376-377 (9th Cir. 1997). Although  
12 settlement letters are not determinative of the amount in controversy, they “count[] for something”  
13 because it is an indication of the plaintiff’s valuation of her case. *Cohn*, 281 F.3d at 840. In this  
14 case, Amador’s settlement demand letter was for \$25,000.00, far below the jurisdictional amount.  
15 Although American Family correctly points out that the settlement letter cannot determinatively  
16 establish the amount in controversy, the settlement letter would seem to indicate that the amount in  
17 controversy will not meet the jurisdictional amount.

18 Therefore, without anything more than the allegation that the punitive damages in this case  
19 may approach some undeterminable, infinite value, American Family has not met its burden to  
20 establish that the actual and punitive damages in this case will rise above the jurisdictional amount  
21 of \$75,000.

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Therefore, based on the foregoing,

THE COURT ORDERS that Plaintiff's motion to remand (#8) is GRANTED.

DATED this 29 day of July, 2010.

  
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Lloyd D. George  
United States District Judge